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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-5324

JULIA GONZALEZ, Individually and as Guardian Ad Litem for LUIS GONZALEZ, Age 9, and MANUEL GONZALEZ, Age 10, and Further on Behalf of all Persons Similarly Situated,

Petitioners,

v.

JAMES F. YOUNG, Director, Hudson County Welfare Board and G. THOMAS RITI, Director New Jersey Division of Public Welfare,

Respondents.

~~BRIEF~~ IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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STATEMENT OF THE CASE

The facts of this matter are essentially undisputed, and are clearly set forth in the reported decisions of both the court of appeals [560 F.2d 160 (3d Cir. 1977)] and the district court [418 F. Supp. 566 (D N.J. 1976)]. Petitioner, Julia Gonzalez, a recipient of Aid to Families with Dependent Children, applied for, and was denied, an emergency assistance grant of $163 to replace funds which had been stolen. The application was denied in accordance with New Jersey's duly promulgated emergency assistance regulations.

Consequently, petitioner filed a civil action in the United States District Court for the District of New Jersey, alleging that she had been denied assistance "even though . . . clearly entitled to same under federal law." The gravamen of her complaint was that New Jersey's emergency program violates federal law because its standard of eligibility is more restrictive than the standard purportedly mandated by § 406(e) of the Social Security Act, 42 USC § 606(e).

Upon consideration of cross motions for summary judgment, the district court entered judgment for defendants on the basis that the State program did not conflict with federal standards.

On appeal, the Court of Appeals for the Third Circuit did not reach the merits of petitioner's claims, but found instead that the district court lacked subject matter jurisdiction over the case "in the posture in which it was presented." 560 F.2d at 163. Hence, the order of the district court was vacated and the matter remanded for dismissal of the complaint for lack of jurisdiction.

Ms. Gonzalez' petition for certiorari seeks review of the Third Circuit's determination regarding jurisdiction.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE OPINION BELOW, WHICH LIMITS JURISDICTION ONLY IN THE NARROWEST OF CIRCUMSTANCES, IS OF INSUFFICIENT IMPORT TO MERIT REVIEW BY THE COURT.

Although facially the decision of the Court of Appeals for the Third Circuit may be an attractive candidate for review by this Court because it concerns the jurisdiction of the district courts to hear civil rights cases, close scrutiny of the decision reveals it to be narrowly drawn and of limited applicability. At the very onset of the opinion, for example, the appellate court made clear that its decision was required because of the manner in which jurisdiction was pleaded: " . . . we determine that the district court did not have jurisdiction over this case in the posture in which it was presented." Gonzalez v. Young, 560 F.2d 160, 163 (3d Cir. 1977) (emphasis added). Terming the decision in Hagans v. Lavine, 415 US 528 (1974) the "crucial polestar" in its analysis, the court unmistakably implied that a more specifically pleaded complaint would easily have alleviated petitioner's jurisdictional difficulty, since the threshold requisite of demonstrating the existence of a substantial constitutional claim is most easily satisfied in welfare matters. See Hagans v. Lavine, 415 US at 564 (Rehnquist, J., dissenting).

Indeed, the court pointed to its recent decision in Williams v. Wohlgemuth, 540 F.2d 163 (3d Cir. 1976), a Pennsylvania case presenting a similar challenge to that state's emergency assistance program, as a model which should have guided the instant petitioner. In Williams, the clearly pleaded constitutional claim met the minimum threshold of substantiality. Because, however, the "complaint filed for Gonzalez . . . contained only the vaguest constitutional overtones relating to the Supremecy Clause," 560 F.2d

at 169, the court properly found that the substantiality test remained unsatisfied in this case.*

It is submitted that only rarely, if at all, will plaintiffs be unable to satisfy the liberally construed substantiality requirements set forth in Hagans, and that, therefore, the issues presented by the instant petition are of interest to only a few litigants. Perhaps it was for this reason that the Court has consistently declined to address these issues when the opportunity to do so has arisen in the past. E.g., Hagans v. Lavine, 415 US at 528 n. 5; Rosado v. Wyman, 397 US 397, 405 n. 7 (1970); King v. Smith, 392 US 309, 312 n. 3 (1968). Because of the limited impact which the Gonzalez decision will have on future litigants, review by this Court of the instant matter is not clearly warranted.

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* Petitioner cites § 406(e) of the Social Security Act, 42 USC § 606(e) as the only source of the rights asserted by her in this matter. Whether or not that statute secures substantive rights to welfare recipients or merely sets guidelines as to the manner in which states may disburse federal public assistance funds is precisely the issue currently before this Court in Quern v. Mandley, No. 76-1159 (cert. granted June 6, 1977) and Califano v. Mandley, No. 76-1416 (cert. granted June 6, 1977). Should the Court ultimately decide that § 406(e) only limits the circumstances in which federal emergency assistance funds may be expended by the State, petitioner would be unable to claim that the statute secures any rights to her and her claim would thus be rendered non-justiciable.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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